

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER 05-0128**

**RESPONSIBLE OFFICER  
WITHHOLDING TAX  
For Tax Period 1995-2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**Issue**

**Withholding Tax** -Responsible Officer Liability

**Authority:** IC 6-3-4-8 (f), IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

**Statement of Facts**

The taxpayer was an incorporator and officer of a corporation that did not remit the proper amount of withholding taxes to Indiana for the tax period 1995-2002. After the taxpayer was personally assessed for the taxes, penalties and interest, he filed a protest. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

**Withholding Tax**-Responsible Officer Liability

**Discussion**

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer argued that he sold his interest in the corporation to another person in December, 1993 and was not in the position of a person responsible for the remittance of withholding taxes to the state of Indiana after that time. The taxpayer offered substantial documentation of the sale

confirming his contention. The taxpayer sustained his burden of proving that he was not a person with the duty to remit withholding taxes to the state after December, 1993.

**Finding**

The taxpayer's protest is sustained.

KMA/JMM/JMS/05/26/05